

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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JERRY D. POUGH,

Case No. 3:15-cv-00443-MMD-VPC

Plaintiff,

ORDER

v.

D. NEVEN, et al.,

Defendants.

This action is a *pro se* civil rights complaint filed pursuant to 42 U.S.C. § 1983 by a state prisoner. On September 21, 2016, this Court granted Plaintiff a thirty-day extension of time to file an amended complaint, as directed by this Court's screening order. (ECF No. 28 at 1.) The thirty-day period has now expired, and Plaintiff has not filed an amended complaint or otherwise responded to the Court's order.¹

District courts have the inherent power to control their dockets and "[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal" of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party's failure to prosecute an action, failure to obey a court order, or failure to comply with local rules. See *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for

¹Plaintiff filed a motion for interlocutory appeal (ECF No. 29). The Court denies this motion and notes that Plaintiff has filed at least six other motions for interlocutory appeal, which the Court has denied. (ECF Nos. 20, 21, 22, 24, 25, 26.)

1 failure to comply with an order requiring amendment of complaint); *Carey v. King*, 856
2 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure to comply with local rule requiring
3 *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833
4 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order); *Henderson*
5 *v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for lack of prosecution and
6 failure to comply with local rules).

7 In determining whether to dismiss an action for lack of prosecution, failure to obey
8 a court order, or failure to comply with local rules, the court must consider several factors:
9 (1) the public's interest in expeditious resolution of litigation; (2) the court's need to
10 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
11 disposition of cases on their merits; and (5) the availability of less drastic alternatives.
12 *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at 130;
13 *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

14 In the instant case, the Court finds that the first two factors, the public's interest in
15 expeditiously resolving this litigation and the Court's interest in managing the docket,
16 weigh in favor of dismissal. The third factor, risk of prejudice to Defendants, also weighs
17 in favor of dismissal, since a presumption of injury arises from the occurrence of
18 unreasonable delay in filing a pleading ordered by the court or prosecuting an action. See
19 *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor — public policy
20 favoring disposition of cases on their merits — is greatly outweighed by the factors in
21 favor of dismissal discussed herein. Finally, a court's warning to a party that his failure to
22 obey the court's order will result in dismissal satisfies the "consideration of alternatives"
23 requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33; *Henderson*, 779 F.2d
24 at 1424. The Court's order requiring Plaintiff to file an amended complaint within thirty
25 (30) days expressly stated: "If Plaintiff does not file an amended complaint within thirty
26 (30) days, the Court will dismiss this action without prejudice." (ECF No. 28 at 1.) Thus,
27 Plaintiff had adequate warning that dismissal would result from his noncompliance with
28 the Court's order to file an amended complaint within thirty (30) days.

1 It is therefore ordered that this action is dismissed without prejudice based on
2 Plaintiff's failure to file an amended complaint in compliance with this Court's September
3 21, 2016, order.

4 It is further ordered that the motion to proceed *in forma pauperis* (ECF No. 18) is
5 denied as moot.

6 It is further ordered that the motion for interlocutory appeal (ECF No. 29) is denied.

7 It is further ordered that the Clerk of Court enter judgment accordingly.

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9 DATED THIS 28th day of October 2016.

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12 MIRANDA M. DU
13 UNITED STATES DISTRICT JUDGE
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